

EXHIBIT O

From: [Michael Melkersen](#)
To: [Han, Suhana S.](#)
Cc: [Michael Melkersen](#); [Dean Kevin R.](#); [Quirk, Michael](#); [Littleton, Judson](#); [Brebner, Adam R.](#); [Rose, Elizabeth A.](#); [Freudenberg, Stephanie L.](#); [Bagley, Terrence M.](#); [Abrams, Kenneth W.](#); [Deppermann, Lee](#); [Hank Young](#)
Subject: [EXTERNAL] Re: ...Re: Garcia, et al. v. Volkswagen Group of America, Inc., et al., Case No. 1:19-cv-331-LO-MSN - Identification of Custodians for Document Searches
Date: Wednesday, February 3, 2021 1:32:58 AM
Attachments: [VWGoA-Garcia-00045818 - Customs Exchange Regarding Import Status.pdf](#)
[VWGoA-Garcia-00044363 image - Accounting Exchange Regarding Non-Saleable Passats.pdf](#)
[VWGoA-Garcia-00244158 - Sellability Power Point Presentation.pdf](#)

Suhana,

I write to follow-up on our call from earlier today. I mentioned that I had seen an e-mail exchange between David Mayer and one of his subordinates (Kathryn Joiner) to suggest that the information regarding the importation status indicated on the HS-7 forms was retrievable. You and Jud asked me to provide that e-mail. I've attached a copy hereto. You will see that Mr. Mayer requests that his subordinates identify for each VIN listed whether, as to the declaration associated with the VIN, the vehicle is listed as "prototype or conforming" - this is a reference to the HS-7 declaration. My point in our call today was that it appears that Mr. Mayer, head of VW's customs at the time, believed that this same information that I am requesting is maintained by VWGOA and is available.

You will see from Ms. Joiner's response that she was "able to find an entry number based on the ordernumwork" even for those cars identified by Mr. Mayer "that were not processed by VIN." This tells me that it is, in fact, possible to determine entry numbers, and specific VIN-level data, even for vehicles not processed/filed by VIN in the import files. My recollection is that Jud stated during our call today that it was his understanding from VWGOA that it is not possible to identify custom entry numbers associated with particular VINs. It appears from this e-mail exchange that Jud's understanding must be incorrect.

While we are all looking at this document, can you tell me why information is redacted from it? I believe we are entitled to the un-redacted version of these communications. Please advise.

As you will also see from the e-mail chain, it is apparent that Mr. Mayer was such an important figure that Mr. Stuzman, who handled a portion of the VWGOA audit relating to the at-issue vehicles, reached out to him directly, causing him to reach out to Ms. Joiner, who was readily able to answer his questions (the same questions I have about numerous other putative class vehicles). I do not believe that any Judge is going to believe that Mr. Mayer, Ms. Joiner or Mr. Stuzman are not relevant document custodians that VWGOA should not be required to search as part of our discovery in this case. It seems to me to be a waste of time to file a motion to compel on this subject, so I would hope that you all change your mind before I file that motion, insofar as I think it will cause your client to lose credibility with the Court. FYI - I plan to file our motion next week, so if you change your mind about adding Mr. Mayer, Ms. Joiner and Mr. Stuzman as custodians before then, please let me know.

Since I am addressing the issue of records custodians again in referencing the document you requested today, I might as well address the remaining two. In my e-mail below, as you may recall, I also ask that you add Kai Ly to the list of custodians to be searched. The reason I made this request is that Mr. Ly was directly involved with discussions with the quality department at VW Chattanooga regarding precise definitions he had requested to determine exactly "what 'unsellable' constitutes for each VIN [267 functional vehicles that were deemed non-sellable] (i.e. unsellable & must scrap vs. unsellable as new vs. unsellable in the U.S. vs. unsellable & requiring rework)." Mr. Ly then states, "Will hopefully have an update by end of the week." Obviously, persons directly involved in discussions about exactly which potential class vehicles are sellable and which are not and the reasons why should be subject to having their documents searched for responsive materials. I have attached a copy of this e-mail exchange for your ease of reference. As with Mr. Mayer, Ms. Joiner and Mr. Stuzman, I ask that you let me know if you change your mind about adding Mr. Ly as a custodian before we file our motion to compel next week.

Finally, I asked that you all add Andrew D'haenens, who works in the VW Quality Department, as a

document custodian to search his files for responsive materials to our discovery. Mr. D'haenens actually prepared a powerpoint presentation regarding the sellability of the at-issue vehicles, which I have attached hereto for your ease of reference. Again, in my opinion, no judge is going to deny me the addition of D'haenens as a custodian knowing that he maintains files with this type of information directly relevant to our claims in this case, and therefore, the only thing VWGOA will accomplish by the continued refusal to add D'haenens as a custodian is to hurt VWGOA's credibility with the Court. For this reason, I wanted to give VWGOA a chance to change its mind and agree to add D'haenens as a custodian before we file our motion to compel next week.

Kind regards,

Mike

On Wednesday, December 16, 2020, 06:41:59 PM EST, Michael Melkersen wrote:

Suhuna,

I still await your response to my e-mail below regarding custodians. As a follow-up to that e-mail, I also request that you add Edward K. Stutzman (VW Internal Auditor) to the list of custodians, as well as David Mayer, customs manager and Kathryn Joiner, customs specialist. I also ask that you add Kai Ly, VW CPA/Controller, as well as Andrew D'haenens, who works in the VW Quality Department.

Please confirm VWGOA agrees to do so.

Thank you.

Mike

On Thursday, December 10, 2020, 10:04:31 PM EST, Michael Melkersen wrote:

It's a date! Thanks.

M

On Thursday, December 10, 2020, 11:46:22 AM EST, Han, Suhana S. wrote:

Mike, hope you managed to get some sleep since your last flurry of emails. How about a meet-and-confer this Monday at 12:30pm Eastern?

From: Michael Melkersen <mike_melkersen@yahoo.com>

Date: Tuesday, Dec 08, 2020, 5:55 AM

To: Han, Suhana S. <HanS@sullcrom.com>

Cc: Michael Melkersen <mike@mlawpc.com>, Dean Kevin R. <kdean@motleyrice.com>, Quirk, Michael <mquirk@motleyrice.com>, Littleton, Judson <littletonj@sullcrom.com>, Brebner, Adam R. <brebnera@sullcrom.com>, Rose, Elizabeth A. <Rosee@sullcrom.com>, Freudenberg, Stephanie L. <freudenbergs@sullcrom.com>, Bagley, Terrence M. <tbagley@mcguirewoods.com>, Abrams, Kenneth W. <kabrams@mcguirewoods.com>, Deppermann, Lee <DEPPERMANNL@sullcrom.com>, Hank Young <hyoung@motleyrice.com>

Subject: [EXTERNAL] Re: Garcia, et al. v. Volkswagen Group of America, Inc., et al., Case No. 1:19-cv-331-LO-MSN - Identification of Custodians for Document Searches

Hi Suhana,

One more thing about the custodians. I had asked for the files of a Customs Manager to be searched, and I referenced a person with the last name Brown, which I took from one of your client's organizational charts. I guess that was a pretty old chart, given your comment in your letter that employee Martha Brown was terminated September 1, 2007. Given the extensive issues raised by our lawsuit that related to customs' matters, we definitely still need someone from your client's customs' department. We ask that you propose someone in charge of customs/importing cars from outside of the United States for VWGoA for this purpose. We also suggest that your client utilize David Mayer as an additional custodian for this purpose, who worked in the custom's department for VW Chattanooga from March 2011 through March 2018, last serving as Custom's Manager. It is my understanding that Mr. Mayer currently works as Customs Operations Manager for Porsche Cars North America.

Thanks.

Mike

On Tuesday, December 8, 2020, 04:40:06 AM EST, Michael Melkersen wrote:

Suhana:

Thank you for your letter regarding VWGoA's further response to our suggested custodian list. We agree with VWGoA that the following custodians that we originally proposed can be excluded, at least for now: Anthony Dickerson, Roberto Eggeling, Fabio Freccia, Lifestyle Department Head, Michael Hill, Roger McAvoy, and Steven Purcell.

For Alexandra Juenger, Jessica Arzivu Mora and Oliver Wessel, VWGoA declined to include or search them as custodians because they have never been employed by VWGoA. Given this position taken by your client, we ask that Ms. Juenger, Ms. Mora and Mr. Wessel be added to the list of custodians to be searched in connection with our outstanding document requests to VWAG. In that regard, it is my understanding that VWAG has proposed to search Andreas Burmeister, Rainer Lamp, Verena Pulcher, Annett Schramm, Stefan Weber and Thomas Wilken. As you may recall, during our call on November 25, 2020, I requested that VWAG add the following individuals to that list: Dirk Richter, Thorsten Vox, Gerhard Kiewel, Daniel Breidbach, Bianca Schoenwaelder, and Tibor Dalenburg. We further request that Christian Klinger be added to the list of custodians for the reasons I expressed in my e-mail to you earlier today (i.e. discussions regarding pre-series and zero series cars and ability to legal sell versus scrapping them). Finally, we ask that you identify the employees of VWAG involved in the audit that led to the identification of illegally sold pre-production cars, as well as the members of VWAG's Product Safety Committee who may have been involved in discussions regarding the purported illegal sale of zero series, pre-series or other early production vehicles, or cars that lacked appropriate documentation to be able to certify their compliance with applicable safety standards.

We disagree, however, to exclude Hardy Brennecke, Michael Horn, Rainer Michel, Hendrik Muth (mistakenly identified in your November 25, 2020 letter as "Thomas Muth"), Joerg Sommer, given our belief that each of them were personally involved in discussions regarding pre-series and zero series vehicles and the legality of selling those cars, all as I described in my e-mail to you earlier today. With regard to "Executive Board Members who signed Project Appropriations Requests" (i.e. Michael Horn, Stephan Jacoby, etc.), we decline to exclude this category of custodians from the search for the same reasons

As to Patrick Mayer and Clark Campbell, we also disagree to exclude them as custodians because we

have reason to believe that they were involved in extensive discussions on how to modify VW Chattanooga operations and procedures to utilize an approach used by VW Mexico (Puebla) to resell early production vehicles, like auto-show and press-fleet cars, that had been previously scrapped. We have reason to believe that Mr. Brennecke, among others, were involved in these discussions. As set forth in my letter to you dated November 3, 2020, we also ask that you identify the members of the VWGoA Internal Audit Department who investigated the issue of the purported illegal sale of pre-series, zero series or other putative class vehicles that purportedly do not contain the proper documentation, and that you include each of them as custodians, along with whatever individuals were primarily communicating about these matters with the Product Safety Committee at VWAG (all as described by VWGoA in its various reports submitted to NHTSA regarding these matters). We also request that Walter Keith Hammock be added as a custodian insofar as he replacement Chi-Han Chin as the Conformity of Production Coordinator in Chattanooga, and it is our understanding that he has also had extensive discussions regarding pre-production cars and the issue of their legality. And as set forth in my letter of November 3, 2020, and again in my e-mail to you earlier today, we ask that you identify relevant custodians to search relating to our RFP# 21 (Carfax Price Calculator), RFP# 41 & 46 (mileage timing and impact of classification of vehicle as new or used), RFP#57 (documents reflecting advantage of putting vehicles in E-Tag before Resale), RFP#64 (alterations to vehicles made post-manufacturer - perhaps head of VWGoA's port operations would be the best custodian(s) for this one), RFP#78 (discussions within VW about disclosure to consumers regarding vehicle use before sale), RFP#89 (safety impacts on differences between pre-production and series production), RFP#99 (identify as custodians individuals responsible for setting up, managing and monitoring the so-called "daily data file feed" referenced in the Carfax Contract and described in paragraph 74 of the Second Amended Complaint).

With regard to Oliver Schmidt and Stuart Johnson, we agree to exclude them as custodians for now, as long as your client produces what we requested in RFP#65 regarding emissions exempt label tracking documents. As I explained in my letter of November 3, 2020, this is relevant because these exempt labels are typically tracked very carefully by VWGoA, and they are typically issued only to functional vehicles that are being used on the road by VWGoA for some purpose prior to the time that VWGoA has obtained emissions' certification. Given that fact, the tracing documents relating to these temporary emissions labels will assist us in identifying pre-production vehicles and tracing the activities of such cars.

I look forward to further discussing the issues of custodians with you during the call that I requested that we schedule sometime this week. Please let me know your availability.

Thanks.

Mike

On Wednesday, November 25, 2020, 06:05:37 PM EST, Deppermann, Lee wrote:

Mike,

Please see the attached correspondence from Suhana.

Best,

Lee J.F. Deppermann

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****This is an external message from: mike_melkersen@yahoo.com ****